

**BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

Appeal by Christina Parascandola and Mark Parascandola)
of the Department of Consumer and Regulatory Affairs')
Issuance, on October 10, 2013, of Certificate of) **BZA No. 18716**
Occupancy No. 1400093, to operate a restaurant on the)
premises at 1501 U Street, NW (Square 189, Lot 59).¹)
_____)

APPELLANTS' PREHEARING SUBMISSION

This appeal was filed on December 9, 2013, challenging the Department of Consumer and Regulatory Affairs' ("DCRA's") issuance of a Certificate of Occupancy ("C of O"), on October 10, 2013, to operate a restaurant on the premises at 1501 U Street, NW (Square 159, Lot 89). See Permit No. 1400093, attached as Exhibit 1. The property for which DCRA issued this C of O is located within an R-5-B zone. See Zoning Report from the Office of Zoning's Web site, attached as Exhibit 2. "Restaurant" is not a permitted use within an R-5-B zone. This use, moreover, is not a nonconforming use. To the extent that the property may have been used as a restaurant in 1958, this use was discontinued. The issue in this appeal is whether DCRA erred to issue a C of O to operate a restaurant on the premises on October 10, 2013. Appellants will show that DCRA's action

¹ In filing their appeal, Appellants inadvertently identified the property address as 2000 15th Street, NW. The property address listed on C of O Number 1400093 is 1501 U Street, NW. Appellants request that the caption and record be corrected for this appeal.

conflicted with the plain language, purpose, and structure of the zoning regulations.

Appellants intend to rely on the following witnesses, each of whom has lived in the neighborhood for more than twenty-five years:

1. Juan A. Mayer, P O Box 73572, Washington, DC, 20056-3572
2. Phyllis Klein, P O Box 73572, Washington DC 20056-3572
3. Ramon Estrada, 1417 T Street, NW, Washington, DC 20009
4. Elwyn Ferris, 1417 T Street, NW, Washington, DC 20009

In addition, Appellants intend to rely on:

5. Christina Parascandola

STATEMENT OF FACTS

The property at 1501 U Street, NW, is a four-story rowhouse, constructed in the 1890s. It sits on the northwest corner of 15th and U Streets, NW. Throughout the most of the 1990s the property was abandoned. During that time, it was not used as a restaurant. Long-time neighborhood residents say that throughout the 1990s and early 2000s, 1501 U Street, NW, was a crack house or used for “running numbers”.

In 2002, Acanthus Architects began renovations of the property. Acanthus gutted the property. *See* photographs from Acanthus Architects Web site documenting the process, available at <http://www.acanthus-architects.com/projects/15th-u-st/>, attached as Exhibit 3.

In 2003, Warren Brown opened LoveCafe in the first floor. LoveCafe sold baked goods from the gourmet bakery Mr. Brown operates across the street (CakeLove), as well as coffee and sandwiches. LoveCafe had an espresso machine and a small counter-top warming oven for heating sandwiches. In 2003 and 2004, residential tenants moved into and occupied the top three floors above the café.

In April 2004, Appellants purchased the property at 2002 15th Street, which abuts 1501 U Street, NW.

In January or February 2012, LoveCafe closed.

In the summer of 2012, a business called “24-Seven,” which had been operating a restaurant at 1408 U Street, NW, moved into the space that LoveCafe vacated, at 1501 U Street, NW. Several months later, the owner of 24-Seven renamed his establishment “Mediterranean Grill and Cafe” and, subsequently, “Mediterranean Spot”.

On June 13, 2012, DCRA issued a building permit for the premises at 1501 U Street, NW, to install an “ANSUL R-102 3-gallon commercial kitchen hood fire suppression system in existing hood - 24 Seven.” See Building Permit Number 1210085, attached as Exhibit 4. According to the plans DCRA approved on June 12, 2012, the establishment obtained permission to install an eight-foot hood over a 36-inch by 24-inch range, with two burners and a 24-inch griddle, a 12-inch by

24-inch charbroiler, two gyro machines – at the address 2002 15th Street, NW. *See* Proposal of 2000 15th Street, NW, attached as Exhibit 5.

The establishment currently does business under the name Mediterranean Spot and lists as its business address 1501 U Street, NW. According to the Mediterranean Spot's Web site and menu, the establishment serves brick oven pizza, beef and lamb kabobs, chicken schwarma, and other cooked-to-order foods.

In mid-July 2013, Appellants searched DCRA's publicly available database for permits issued for the premises at 1501 U Street, NW. Appellants' search of 1501 U Street, NW, produced one result: the aforementioned building permit, Number 1210085, issued on June 13, 2012.

In late July or early August, 2013, Appellants went to DCRA's records room and requested any and all permits issued for 1501 U Street, NW. The clerk at the counter produced the records that are attached as Exhibits 4 and 5.

On October 10, 2013, DCRA issued a C of O to operate a 32-seat, 50-person occupancy load restaurant on the first floor of 1501 U Street, NW. *See* Exhibit 1. The Certificate of Occupancy states that the property is located within an R-5-B zone. *Id.*

DISCUSSION

The Department of Consumer and Regulatory Affairs erred to issue C of O Number 1400093, to operate a restaurant on the premises at 1501 U Street, NW. The property is located within an R-5-B zone. “Restaurant” is not an approved use of a property zoned R-5-B. *See* 11 DCMR 350.

Use as a restaurant is allowed as a nonconforming use under 11 DCMR 2002.4, if the use as a restaurant commenced prior to 1958, when the zoning code was adopted. Assuming that the property was used as a restaurant prior to 1958, the current owner is entitled to continue the nonconforming use, provided that (1) the use, if restricted to a part of the structure, cannot be extended to other parts of the structure, (2) the structure devoted to the nonconforming use cannot be enlarged, and (3) structural alterations, except as required to comply with the law, are not permitted. 11 DCMR 2002. Ordinary repairs, alterations, and “modernizations” are permitted. 11 DCMR 2002.4.

If, however, the use has been discontinued for more than three years, the zoning regulations provide that

[d]iscontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for any period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. *Any subsequent use shall conform to the regulations of the district in which the use is located.*

11 DCMR 2005.1 (emphasis added). Moreover,

[t]his presumption may only be rebutted by objective proof of a continuing use or of affirmative steps taken to resume the use during the period of time identified by the Zoning Administrator when revoking an existing certificate of occupancy or denying an application for a replacement certificate of occupancy.

11 DCMR. 2005.2

The property at 1501 U Street, NW, was not used as a restaurant for at least ten years. By all accounts, the property sat abandoned far in excess of the three years which constitute *prima facie* evidence of no intention to resume active operation as a nonconforming use. In response to Appellants' request for all permits issued at for 1501 U Street, NW, DCRA produced only the building permit issued on June 13, 2012, and supporting documents. See Exhibit 4. No C of O to operate a restaurant is included in these documents. The Department of Consumer and Regulatory Affairs therefore was incorrect to issue a certificate of occupancy to operate a restaurant at 1501 U Street, NW, in 2013.

CONCLUSION

“Restaurant” is not a permitted use in an R-5-B zone. Regardless of whether the property at 1501 U Street, NW, was used as a restaurant in 1958 and in subsequent years, it was not used as a restaurant for a period of at least three years in the 1990s and early 2000s. “Restaurant” therefore is not a nonconforming use. The Department of Consumer and Regulatory Affairs has produced no C of O

issued before 2013, for the use the property as a restaurant. Therefore, DCRA's issuance of a C of O on October 10, 2013, to operate a restaurant, was in error.

Appellants respectfully request that the Board determine that DCRA's action was in error and revoke C of O Number No. 1400093.

Respectfully submitted,

/s/ Christina Parascandola
Christina Parascandola
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(202) 427-7018

CERTIFICATE OF SERVICE

I hereby certify that, on February 18, 2014, a copy of the foregoing Prehearing Submission was served by first-class mail on:

Mr Tony Norman
ANC 1B
2000 14th Street, NW
Washington, DC 20009

Mr. John M. Swagart, Jr.
1804 11th St., NW
Washington, DC 20001

I further certify that, on February 18, 2014, a copy of the foregoing Prehearing Submission was served by electronic mail on:

Mr. Mohammed Rashed
The Mediterranean Spot
mrashed65@gmail.com

/s/ Christina Parascandola
Christina Parascandola
2002 15th Street, NW
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